

Citicorp Industrial Credit, Inc.

A Citibank Affiliate
399 Park Avenue
New York, N.Y.
10043

INTERSTATE COMMERCE COMMISSION

Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Citicorp Industrial Credit, Inc.
Refinancing of Railcar Acquisition

Dear Sir:

Enclosed for recordation with the Interstate Commerce Commission pursuant to Section 11303 of Title 49 of the United States Code ("Section 11303") are one original and two counterparts of each of the following documents:

1. Mortgage dated as of October 1, 1979 (the "Mortgage") between Citicorp Industrial Credit, Inc., as Lender (the "Lender"), and C&H Railways, Ltd., as Borrower (the "Borrower"), which evidences, among other things, the mortgage and assignment as security by the Borrower to the Lender of the Borrower's right, title and interest in, to and under (a) certain railroad equipment (the "Equipment") described in Annex 1 to the Mortgage and all proceeds thereof; (b) a Lease Agreement made as of September 23, 1977 between Rex Railways, Inc., as Lessor, and the Lenawee County Railroad Company, Inc., as Lessee, which was recorded pursuant to Section 11303 on June 22, 1978 at 9:20 A.M. under Recordation No. 9453, as amended by an Equipment Schedule which was recorded pursuant to Section 11303 on February 26, 1979 at 11:20 A.M. under Recordation No. 9453-A, a First Amendment to Equipment Schedule which was recorded pursuant to Section 11303 on March 15, 1979 at 11:40 A.M. under Recordation No. 9453-B, a Second Amendment to Equipment Schedule which was recorded pursuant to Section 11303 on March 15, 1979 at 11:40 A.M. under Recordation No. 9453-G and which identifies the Borrower as the principal for whom Rex Railways, Inc. acts and who owns the Equipment (as so amended, the "Lease"), and all payments to become due thereunder; and (c) a Management Agreement dated as of February 15, 1979 (the "Management Agreement") between Rex Railways, Inc. and Skiva International, Inc. which was recorded pursuant to Section 11303 on March 15, 1979 at 11:40 A.M. under Recordation No. 9453-D, and all payments to become due thereunder. The

Counterpart — *Mr. Dolores M. Rodriguez*

RECORDATION NO. 10902 Filed 1425

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INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 10902-A Filed 1425

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INTERSTATE COMMERCE COMMISSION

9-231A091
No. 9-231A091
Date OCT 18 1979
Fee \$ 260.00
ICC Washington, D. C.

RECORDATION NO. 10902-B Filed 1425

OCT 18 1979-1 50 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 10902-C Filed 1425

OCT 18 1979-1 50 PM

INTERSTATE COMMERCE COMMISSION



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right, title and interest of the Borrower which is mortgaged and assigned as security pursuant to the Mortgage was acquired from Skiva International, Inc. pursuant to an Assignment dated March 15, 1979 (the "Assignment") which was recorded pursuant to Section 11303 on March 15, 1979 at 11:40 A.M. under Recordation Nos. 9453-F and 10131-F.

2. Guaranty and Agreement dated as of October 1, 1979 among Citicorp Industrial Credit, Inc., Rex Railways, Inc. and Rex-Noreco, Inc. which evidences, among other things, the guarantee by Rex Railways, Inc. and Rex-Noreco, Inc., severally and jointly, of certain of the obligations of the Borrower under the Mortgage and the mortgage and assignment as security by Rex Railways, Inc. to the Lender of its right, title and interest in, to and under the Lease and all payments to become due thereunder.

3. Consent and Agreement dated as of October 1, 1979 between the Lenawee County Railroad Company, Inc. and Citicorp Industrial Credit, Inc., which evidences, among other things, the consent of the Lenawee County Railroad Company to the mortgage and assignment as security made by the Borrower to the Lender pursuant to the Mortgage.

4. Consent and Agreement dated as of October 1, 1979 between Skiva International, Inc. and Citicorp Industrial Credit, Inc., which evidences, among other things, the consent of Skiva International, Inc. to the mortgage and assignment as security made by the Borrower to the Lender pursuant to the Mortgage; the right, title and interest subject to such mortgage and assignment having been assigned to the Borrower by Skiva International, Inc. pursuant to the Assignment.

5. Release and Agreement dated as of October 1, 1979 between Twitter, Inc. and Citicorp Industrial Credit, Inc., which evidences, among other things, the release by Twitter, Inc. to the Borrower of all of its right, title and interest in, to and under a Conditional Sale Agreement dated as of February 13, 1979 among Twitter, Inc., as Vendor, Rex Railways, Inc., as Manager, and Skiva International, Inc., as Vendee, which was recorded pursuant to Section 11303 on February 22, 1979 at 4:40 P.M. under Recordation No. 10131, as amended by Amendment Agreement #1 dated as of February 13, 1979 which was recorded pursuant to Section 11303 on March 15, 1979 at 11:40 A.M. under Recordation No. 10131-B, including all of its right, title and interest in and to the Equipment.

6. Amendment dated as of October 1, 1979 between Rex Railways, Inc. and C&H Railways, Ltd., which amends the

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Management Agreement; the rights and obligations of C&H Railways, Ltd. under the Management Agreement having been acquired from Skiva International, Inc. pursuant to the Assignment.

The addresses of the parties to the enclosed documents are as follows:

1. Citicorp Industrial Credit, Inc., 399 Park Avenue, New York, New York 10043.

2. C&H Railways, Ltd., 1250 Broadway, New York, New York 10018.

3. Rex Railways, Inc., 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632.

4. Rex-Noreco, Inc., 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632.

5. Twitter, Inc., c/o Rex Railways, Inc., 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632.

6. Lenawee County Railroad Company, Inc., 708 East Michigan Street, Adrian, Michigan 49221.

7. Skiva International, Inc., 1250 Broadway, New York, New York 10018.

The Equipment covered by the enclosed documents consists of 100 70-ton, 50'6" general purpose box cars, manufactured by Pullman Standard Division of Pullman Incorporated, having the mechanical designation of the American Association of Railroads "XM", bearing the road numbers of the Lenawee County Railroad Company, Inc. LCRC 2001 through 2100, inclusive, and bearing the legend "Ownership Interest Subject to a Security Agreement Filed under the Interstate Commerce Act."

Also enclosed is a check in the amount of \$260 for payment to the Interstate Commerce Commission of the required filing fees of \$10 for the Amendment to the Management Agreement and \$50 for each of the other five documents which are enclosed.

Please accept the enclosed documents for recordation and make the appropriate entries to the Index of Documents in order to reflect the assignments, transfers, releases and amendments which are effected by such documents and described above. Please return the original of each of the enclosed documents, stamped with a recordation number, together with the usual letter of the Commission confirming recordation, to the delivering messenger of our counsel,



A Citibank Affiliate

399 Park Avenue
New York, N.Y.
10043 New York 10005, for transmittal to the undersigned.

Very truly yours,

CITICORP INDUSTRIAL CREDIT,
INC.

By W. H. Bergen
Title Vice President

Marguerite Kahn
(212) 422-6767

Citicorp Industrial Credit, Inc.

Dolores Rodriguez
298-5970

10902/C
RECORDATION NO. Filed 1425

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INTERSTATE COMMERCE COMMISSION

CONSENT AND AGREEMENT

Dated as of October 1, 1979

between

LENAWEE COUNTY RAILROAD COMPANY, INC.

and

CITICORP INDUSTRIAL CREDIT, INC. ✓

(COVERING 100 GENERAL PURPOSE BOXCARS)

CONSENT AND AGREEMENT

This **CONSENT AND AGREEMENT** dated as of October 1, 1979 between **LENAWEE COUNTY RAILROAD COMPANY, INC.** (the **Lessee**) and **CITICORP INDUSTRIAL CREDIT, INC.** (the **Lender**).

W I T N E S S E T H :

WHEREAS, the Lessee is the lessee under a Lease Agreement made as of September 23, 1977 between the Lessee and Rex Railways, Inc., as lessor (the **Manager**), which Lease Agreement has been supplemented by an Equipment Schedule and a First Amendment and Second Amendment thereto (such Lease Agreement, as so supplemented and amended is herein referred to as the **Lease**);

WHEREAS, the Manager is acting as the agent for C&H Railways, Ltd. (the **Borrower**) pursuant to a Management Agreement dated as of February 13, 1979 (the **Management Agreement**) between the Manager and, through assignment from Skiva International, Inc. (**Skiva**), the Borrower;

WHEREAS, Skiva has assigned its right, title and interest in, to and under the Management Agreement and the Lease to The Provident Bank (**Provident**);

WHEREAS, the Borrower desires to prepay the Conditional Sale Indebtedness, as defined in the Conditional Sale Agreement (the **Conditional Sale Indebtedness**), among Twitter, Inc., the Manager and, through assignment from Skiva, the Borrower, dated as of February 13, 1979 and amended by Amendment Agreement #1 dated as of February 13, 1979;

WHEREAS, the Lender has agreed, pursuant to a Mortgage dated as of October 1, 1979 (the **Mortgage**, and all terms used herein shall have the respective meanings assigned to them in the Mortgage, unless otherwise defined herein) between the Lender and the Borrower, to make a secured loan to the Borrower (the **Loan**) to finance the prepayment of the Conditional Sale Indebtedness upon the condition, among others, that the Lessee execute and deliver this Consent and Agreement; and

WHEREAS, the Lessee desires to have the Lender make the Loan to the Borrower pursuant to the Mortgage.

NOW, THEREFORE, in consideration of the agreements of the Lender under the Mortgage and the premises hereof and thereof and other good and valuable consideration, the parties hereto agree as follows:

SECTION 1. Consent to Mortgage

The Lessee hereby consents to the terms and provisions of the Mortgage and Section 7 of the Guaranty, including, but not limited to, the prepayment of the Conditional Sale Indebtedness by the Borrower, the making of the Loan by the Lender to the Borrower, the mortgage of, and grant of a security interest in, the Collateral by the Borrower to the Lender, the assignment by the Borrower to the Lender of the Lease and the Management Agreement and all of the Borrower's rights, powers and remedies under the Lease and Management Agreement, respectively, and the assignment by the Manager to the Lender, as security, of all of the Manager's right, title and interest in and to the Lease.

SECTION 2. Agreements of the Lessee.

The Lessee hereby agrees that:

(a) **Entitlement to Benefits.** The Lender, by virtue of the Mortgage, shall, to the extent set forth in Section 3 of the Mortgage, be entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by the Lessee under the Lease as though the Lender were named therein as either "RRI", "C&H" or the "Manager".

(b) **No Liability.** The Lender shall not, by virtue of this Consent and Agreement or the Mortgage, including, without limitation, the assignment by the Borrower to the Lender of the Lease and Management Agreement and all of the Borrower's rights, powers, privileges and remedies under the Lease and Management Agreement, respectively, be or become subject to any liability or obligation under the Lease or otherwise.

(c) **Modification of the Lease.** The Lease shall not, without the prior written consent of the Lender, be terminated, modified or amended, nor shall any action be taken or omitted by the Lessee, the taking or omission of which might result in any alteration or impairment of the Lease or the Mortgage, or any of the rights created thereunder.

(d) **Compliance.** The Lessee shall comply with all of the terms and conditions of the Mortgage which relate to the maintenance or use of the Equipment.

(e) **Payment to Lender.** The Lessee shall pay all amounts due and payable under the terms of the Lease, including, without limitation, rental charges pursuant to Section 6 thereof, directly to the Lender at the address set forth in Section 28 of the Mortgage, without deduction, set-off, reduction, abatement, counterclaim or recoupment whatsoever for amounts due other persons or corporations or any reason whatsoever. The Lessee covenants that each payment made by the Lessee pursuant to this paragraph (e)

shall be accompanied by notice identifying the party making such payment or on behalf of which such payment is being made. The provisions of this paragraph (e) shall not prevent the Lessee from asserting any claims separately against the Borrower. The Lender shall apply such amounts pursuant to the provisions of Section 28 of the Mortgage.

(f) **Information.** The Lessee shall provide to the Lender such certificates, statements or other information as the Lender may reasonably request, including, without limitation, copies of all information and reports provided to the Borrower or the Manager under the Lease.

(g) **Financial Information.** The Lessee shall furnish the Lender:

(i) within 90 days after the close of each fiscal year of the Lessee, a balance sheet and statement of income of the Lessee as at the end of such year, setting forth in each case the comparable figures for the previous fiscal year, accompanied by an opinion of independent certified public accountants, which opinion shall state that such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied, that the examination by such accountants has been made in accordance with generally accepted auditing standards and that such accountants have obtained no knowledge of the occurrence of any default under the Lease; **provided, however,** that if the Lessee does not in any year receive or obtain financial statements certified by independent certified public accountants, such financial statements shall be certified by the chief financial officer of the Lessee as complete and correct;

(ii) within each of the periods set forth in (i) above, a certificate of an authorized officer of the Lessee stating that he has reviewed the activities of the Lessee and, to the best of his knowledge, there is no condition or event which constitutes, or which after notice or lapse of time or both would constitute, an event of default, as defined in the Lease, or, if such condition or event has occurred or is continuing, specifying the nature and period of continuance thereof, and the actions which the Lessee has taken or proposes to take with respect thereto;

(iii) upon the occurrence of any event of default under the Lease, a certificate of an authorized officer of the Lessee stating that such an event of default has occurred, the

nature and period of continuance thereof, and the actions which the Lessee has taken or proposes to take with respect thereto; and

(iv) with reasonable promptness, any other information which the Lender shall reasonably request.

(h) **Assignment by Lender.** The Lender may assign, without the consent of the Lessee, any or all of its rights under the Lease, the Management Agreement, the Note and the Mortgage. In the event of any such assignment and upon written notice to the Lessee, the Lender's assignee shall, to the extent of such assignment, be entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by the Lessee under the Lease as though the Lender's assignee were named therein as "RRI", "C&H" or the "Manager".

(i) **Opinion of Counsel.** On the Closing Date the Lessee shall deliver to the Lender an opinion of counsel, dated the Closing Date, to the effect set forth in paragraphs (a) through (f) of Section 3 of this Consent and Agreement, which opinion may be subject to the qualifications set forth in paragraph (b) of Section 12 of the Mortgage.

SECTION 3. Representations and Warranties of the Lessee.

The Lessee represents and warrants that:

(a) **Due Organization.** It is a corporation duly organized and validly existing under the laws of the State of Michigan and had the corporate power and authority to enter into the Lease Agreement and the Equipment Schedule at the time it entered into each of such agreements and has the corporate power and authority to enter into this Consent and Agreement and perform its obligations under the Lease and this Consent and Agreement.

(b) **Due Authorization and Enforceability.** This Consent and Agreement, the Lease Agreement and the Equipment Schedule have been duly authorized, executed and delivered by the Lessee, and assuming due authorization, execution and delivery by the other parties thereto, these agreements as well as the Lease are legal, valid and binding obligations of the Lessee, enforceable in accordance with their respective terms.

(c) **No Violation.** The execution and delivery by the Lessee of this Consent and Agreement, the Lease

Agreement and the Equipment Schedule are not, and the performance by it of its obligations under these agreements as well as under the Lease will not be inconsistent with its charter or by-laws, do not and will not contravene any law, governmental rule or regulation, judgment or order applicable to it and do not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound or require the consent or approval of, the giving of notice to, the registration with or the taking of any action in respect of or by, the Interstate Commerce Commission or any other Federal, state, local or Canadian governmental authority or agency, except such as have been obtained, given or accomplished.

(d) **Title to the Equipment.** On the Closing Date, each Unit of Equipment will be free and clear of all claims, liens, security interests and other encumbrances (Liens) of any nature arising by, through or under the Lessee other than the rights of the Lender under the Mortgage, the Note and the Guaranty, the rights of the Manager under the Management Agreement and the rights of the Lessee under the Lease.

(e) **Performance Will Not Create Liens.** The performance by it of its obligations under this Consent and Agreement and the Lease will not subject the Collateral, including, without limitation, the Equipment, the Lease and the Management Agreement, to any Lien (other than the Liens provided in the Mortgage) under any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound.

(f) **No Litigation.** There are no actions, suits, proceedings or investigations pending, or to the knowledge of the Lessee, threatened, before any court, regulatory commission, board or other governmental authority which question the validity of this Consent and Agreement or the Lease or which might affect the ability of the Lessee to perform its obligations hereunder or thereunder, or which might result, either individually or in the aggregate, in a material adverse change in the business, operations, affairs or condition of the Lessee, except as previously disclosed in writing to the Lender.

(g) **Full Disclosure.** There is no fact known to the Lessee which materially adversely affects or in the future may (so far as the Lessee can now foresee) materially adversely affect the business, operations, earnings, affairs, prospects or condition of the Lessee or any of its properties or assets which has not been disclosed herein or

in the other documents, certificates and statements furnished to the Lender specifically for use in connection with the transactions contemplated hereby and by the Mortgage.

(h) **Status of Equipment.** The 100 boxcars described in and bearing the identification numbers set forth in Annex 1 to the Mortgage are subject to the Lease and all of terms and provisions thereof.

(i) **Compliance with Lease.** The Lessee has complied with all terms and provisions of the Lease and has performed all obligations and taken all actions required to be performed or taken by it under the Lease.

SECTION 4. Survival of Representations and Warranties; Binding Effect.

(a) **Survival.** All agreements, representations and warranties contained in this Consent and Agreement, the documents referred to herein and any document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith shall continue in effect following the execution and delivery of this Consent and Agreement and shall continue in effect so long as any amount owing under the terms of the Mortgage remains outstanding and unpaid.

(b) **Binding Effect.** All agreements, representations and warranties contained in this Consent and Agreement, the documents referred to herein and any document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith or from time to time thereafter shall bind the party making the same and its successors and assigns and shall inure to the benefit of each party for whom made and their respective successors and assigns.

SECTION 5. Notices.

All communications and notices with respect to the transactions contemplated by this Consent and Agreement shall become effective when deposited in the United States mail, with proper postage for first-class mail, prepaid, addressed (a) if to the Lender, to 399 Park Avenue, New York, New York 10043, Attention: Manager, Contracts Administration; and (b) if to the Lessee, to 708 East Michigan Street, Adrian, Michigan 49221 with a copy to the Manager, to 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632; or at such other address as any party hereto may from time to time designate by notice duly given in accordance with the provisions of this Section to the other party hereto.

SECTION 6. Miscellaneous.

(a) **Execution.** This Consent and Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, all of which, when so executed and delivered, shall constitute a single instrument, but the counterpart or counterpart set delivered to the Interstate Commerce Commission for recordation and subsequently redelivered to the Lender shall be deemed the original counterpart and all other counterparts hereof shall be deemed duplicates thereof. Although this Consent and Agreement is dated as of the date first above written for convenience, the actual dates of the execution hereof by the parties hereto are respectively the dates set forth under the signatures hereto.

(b) **Governing Law.** This Consent and Agreement shall be governed by, and be construed in accordance with, the laws of the State of New York, **provided, however,** that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303, such additional rights arising out of the filing, recording, registering, or depositing hereof and any rights arising out of the marking on the Units of Equipment.

(c) **Amendments, Supplements, etc.** Neither this Consent and Agreement nor any of the terms hereof may be amended, supplemented, waived or modified (herein referred to as a **change**) orally, but only by an instrument in writing signed by the party against which enforcement of such change is sought.

(d) **Headings.** The headings of the sections and paragraphs of this Consent and Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Consent and Agreement to be duly executed by their respective officers thereunto duly authorized as of the date set forth above.

CITICORP INDUSTRIAL CREDIT, INC.

By W. H. Berger

Title: V.P.

Date: 10/16/79

Attest: Kenneth L. Rosh
[Seal]

LENAWEE COUNTY RAILROAD COMPANY,
INC.

By _____

Title: _____

Date: _____

Attest: _____
[Seal]

IN WITNESS WHEREOF, the parties hereto have caused this Consent and Agreement to be duly executed by their respective officers thereunto duly authorized as of the date set forth above.

CITICORP INDUSTRIAL CREDIT, INC.

By _____

Title: _____

Date: _____

Attest: _____

[Seal]

LENAWEE COUNTY RAILROAD COMPANY,
INC.

By John H. Morison

Title: PRESIDENT

Date: OCTOBER 12, 1979

Attest: [Signature]

[Seal]

Secy

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SEAL

FACSIMILE

State of New York)
 ss.:
County of New York)

On this 16th day of October, 1979, before me personally appeared W. H. Berger, to me personally known, who being by me duly sworn, says that he is the VP of Citicorp Industrial Credit, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Patrice J. Marchese
Notary Public

[Notarial Seal]

NOTARY PUBLIC
STATE OF NEW YORK
COMMISSION EXPIRES
12/31/81

State of _____)
 ss.:
County of _____)

On this _____ day of October, 1979, before me personally appeared _____, to me personally known, who being by me duly sworn, says that he is the _____ of Lenawee County Railroad Company, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

State of New York)
 ss.:
County of New York)

On this _____ day of October, 1979, before me personally appeared _____, to me personally known, who being by me duly sworn, says that he is the _____ of Citicorp Industrial Credit, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

State of Virginia)
 ss.:
County of Patrick)

On this 12 day of October, 1979, before me personally appeared John H. Marmo, to me personally known, who being by me duly sworn, says that he is the President of Lenawee County Railroad Company, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Robert M. Harris
Notary Public

[Notarial Seal]